

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

MARGIE H. LEDET

PLAINTIFF

VS.

CIVIL ACTION NO. 2:19-cv-70-KS-RPM

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION  
AND DISMISSING CASE WITH PREJUDICE, ETC.

This cause is before the Court on Complaint [1] filed by Margie H. Ledet against the Commissioner of Social Security wherein she requests the Court to grant to her, her social security disability benefits. Following the Answer [5] of the Commissioner, a Motion for Summary Judgment [7] was filed by Plaintiff requesting the Court to grant summary judgment on her Complaint. Likewise, a Motion to Affirm the Decision of the Commissioner [9] was filed by the Defendant. Following briefing, a Proposed Finding and Recommendation [13] was entered by Robert P. Myers Jr., United States Magistrate Judge recommending that the decision of the Commissioner be affirmed. Plaintiff filed an Objection [14] to the Report and Recommendation of Judge Meyers, and after considering the pleadings and the record herein the Court finds that the decision of the Commissioner should be affirmed, and this Complaint dismissed with prejudice for the following reasons.

I. PROCEDURAL HISTORY

Plaintiff spent most of her career working in the retail business as a manager. In 2008 she began working for Estee Lauder cosmetics company. At that time, she was immediately post bi-lateral mastectomy but apparently, she healed from the surgery and began her job with Estee

Lauder. In 2011 she was involved in a work related motor vehicle accident while working and her chest hit the steering wheel and she had to have a second double mastectomy to remove the reconstructed breasts. She had other surgeries and complications including a hysterectomy, pain problems, depression, and injuries from the work related motor vehicle accident. She filed for disability benefits in 2011 and again in 2016 alleging that 2011 was the beginning of the onset of her disability. Her claims for disability were denied which led ultimately to the filing of this litigation.

Following the cross-filing of summary judgment motions, Judge Myers entered his Proposed Findings and Recommendation [13] and Plaintiff filed her Objection [14] to it. The Objection stated by Plaintiff is as follows “ the Magistrate Judge’s recommendation states that it is not clear that the ALJ failed to take into consideration the potential severity of Plaintiff’s chest pain and Somatic Symptom Disorder (SSD). (doc.13, p.5) It notes that Dr. Vohra stated that he is unable to delineate restrictions based upon post mastectomy pain versus thoracic and lumbar pain. *Id.* From this statement the Magistrate Judge concludes that, because Dr. Vohra could not delineate restrictions between these conditions, the ALJ’s finding that the thoracic and lumbar degenerative severe in effect, “incorporates consideration of Plaintiff’s chest pain.” *Id.* To this conclusion, Plaintiff respectfully objects. (doc 14, p.2-3).

### **Dr. Vohra**

Plaintiff had a very complex medical history with claims of severe post mastectomy pain and complications and thoracic and lumbar pain. There were also claims for depression and other complications resulting from the surgery and motor vehicle accident.

Judge Meyers went through the five step sequential process to determine disability. 20 C.F.R. §404.1529(a), §404.920(a). He recognized that the claimant initially bears the burden of proving

disability under the first four steps, but the burden shifts to the SSA for the fifth step. *Chapparo v. Bowen*, 815 F.2d 1008, 1011 (5th Cir. 1987). In step five the burden shifts to the SSA to prove that she is unable to perform any relevant gainful work and then the burden shifts to the claimant to demonstrate that the claimant cannot perform an occupation that exists in significant numbers in the national economy. Dr. Vohra stated, “I think it would be impossible to delineate restrictions based on her post mastectomy pain versus her thoracic pain versus her lumbar pain.” (doc. 6 at 1183). In addition to the mentioned pain, claimant suffered from Somatic Symptom Disorder and depression. There is a significant amount of medical and other evidence in the record. (doc. 6). Judge Myers agreed that the ALJ employed the correct standard at step two of the sequential evaluation process. The objection was made by Plaintiff, but this Court finds that the objection is not well taken. The Plaintiff argues that *Stone v. Heckler*, 752 F. 2d 1059, 1104-1105 (5th Cir. 1985) applies but Judge Myers found that the express statement of the construction given by the ALJ as provided at 20 C.F.R. §404.1502(c)(1984) was used and was proper. And, Judge Myers agreed that the testimony of the vocational expert established that the Plaintiff could perform substantial gainful activity available in the general economy. This finding was also supported by Drs. Zuniga and James.

Judge Myers also found that there was substantial evidence to substantiate the Commissioner’s finding and that the proper legal standard was used. This Court is not to act as the fact finder but is only to review and determine if there was substantial evidence supporting the Commissioner’s decision and that the proper legal standard was used. This Court finds in the affirmative.

For the reasons above described the Court finds that the opinion of the Administrative Law Judge is correct and for the reasons set forth above this Court concludes that Plaintiff’s

objections lack merit and should be overruled. The Court further concludes that the Proposed Findings and Recommendation of Judge Myers is an accurate statement of the facts and the correct analysis of the law in all regards. Therefore, the Court accepts, approves and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Proposed Findings and Recommendation [13].

Accordingly, IT IS HEREBY ORDERED that the United States Magistrate Judge Robert P. Myers Jr.'s Proposed Findings and Recommendation is accepted pursuant to 28 U.S.C. §636(b)(1) and that the Objection filed by Plaintiff is OVERRULED. The ruling of the Commissioner is affirmed, and Plaintiff's claim is DISMISSED WITH PREJUDICE.

SO ORDERED this the 30th day of September, 2020,

s/Keith Starrett  
UNITED STATES DISTRICT JUDGE